

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Anne & Mary Clare Sweeney,
Appellants,

v.

Dubuque County Board of Review,
Appellee.

ORDER

**Docket Nos. 13-31-0292 through
13-31-0298**

On May 20, 2014, the above-captioned appeals came on for telephone hearing before the Iowa Property Assessment Appeal Board. The appeals were conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Attorney Arthur F. Gilloon of Gilloon, Wright & Hamel, PC, Dubuque, Iowa, represented Appellants Anne and Mary Clare Sweeney. Assistant Dubuque County Attorney Lyle Gallart represented the Dubuque County Board of Review. The Appeal Board, having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Anne and Mary Clare Sweeney appeal from the Dubuque County Board of Review decision regarding the 2013 property assessments of properties located in the Prairie Creek Township, Dubuque County, Iowa. The appeals include seven agriculturally classified parcels totaling 118.38 acres. The subject parcels are contiguous and operated as a unit, although bisected by Highway 151. (Exhibit I). One of the parcels is improved. Parcel 20-11-426-001 (Docket 0295) is has a one-story residence, built in 1952, with 1516 square feet of living area and several small enclosed porches. It also has a 6240 square-foot steel pole shed with an open side built in 1985. Several other small farm buildings are on the site but they have no assessed value. The appeals were based on a claim that the agriculture land value is not correct. Therefore, the Appeal Board will not address the value of the improvements.

The Sweeneys filed a single protest for all seven parcels with the Board of Review. They asserted the assessments were not equitable as compared to assessments of other like property and that the properties were assessed for more than the value authorized by law under Iowa Code sections 441.37(1)(a)(1-2). They also asserted the properties were misclassified under section 441.37(1)(a)(3); and that there was a change downward in the value since the last assessment under sections 441.37(2) and 441.35(3). Their misclassification claim, however, essentially reasserted that the properties were over-assessed. Furthermore, in a re-assessment year, a challenge based on downward change in value is akin to a market value claim under section 441.37(1)(a)(2). *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). Accordingly, Sweeneys only claims were inequity and over-assessment.

The following chart outlines the protests by parcel:

Docket No.	Parcel No.	Acres	2013 Land AV
13-31-0292	20-11-451-001	21.28	\$63,531
13-31-0293	20-11-401-001	33.80	\$94,556
13-31-0294	20-11-476-001	0.45	\$1,267
13-31-0295	20-11-426-001	13.60	\$40,172
13-31-0296	20-11-200-005	12.67	\$39,881
13-31-0297	20-11-200-003	31.20	\$85,417
13-31-0298	20-11-200-004	5.38	\$16,824
	Total	118.38	\$341,648

The Board of Review reduced the value of the improved parcel (Docket 0295) by assigning no value to the “obsolete structures of the lean-to, bin, and crib,” which resulted in a lower improvement value of \$5620. The Board of Review denied the remaining requests for a change in land value for all parcels.

The Sweeneys then appealed to this Board. In addition to inequity and over-assessment, Sweeneys also contend there is an error in the assessment under section 441.37(1)(a)(4). However,

this claim was not made to the Board of Review and we are without jurisdiction to consider it. The Sweeneys assert the correct total value of the parcels is \$253,720, allocated as \$192,000 to the land value, \$56,720 in dwelling value and \$5000 in agricultural building value to the improved parcel. They did not allocate land values to the subject parcels.

James Sweeney, Ann and Mary Clare Sweeney's brother, testified on their behalf. James explained the properties the Sweeney sisters submitted to the Board of Review are all located proximate to their farm. The following chart identifies these properties and their proximities according to James' testimony.

Comparable Parcel #	Owner	Distance from Subject Sites	Acres	Assessment	AV/Acre	Difference between Sweeney Average AV per acre
20-10-400003	Kunde	0.5 miles	40	\$108,067	\$2,701.68	(\$184.36)
20-10-200003	Weber	1-2 miles	40	\$98,658	\$2,466.45	(\$419.58)
20-13-100001	Goedken	NW of Hwy 151 Across Callahan Rd/Adjacent to Sweeney Farm	39.03	\$90,560	\$2,320.27	(\$565.76)
20-14-200004	Goedken	SE Crnr of 151 and 12 mile Rd/Adjacent to Sweeney Farm	37.98	\$99,286	\$2,614.17	(\$271.86)
20-12-300002	Pfab	Across Street from Sweeney Homestead	38.99	\$90,693	\$2,326.06	(\$559.97)
20-14-200001	Goedken	SE Crnr of 151 and 12 mile Rd/Adjacent to Sweeney Farm	37.8	\$99,087	\$2,621.35	(\$264.68)
					Average Difference	(\$377.70)

Sweeneys contend these properties, which are very near the subject properties, have lower assessments than subject parcels. To demonstrate this perceived inequity, they compare the assessed value per acre of these sites to the average per-acre assessment of the subject parcels, which is \$2886.03. Based on this analysis, they believe the subject properties assessments are, on average, roughly \$378 per acre higher than similar nearby agricultural sites.

The Sweeneys also created a chart with the assessed values of their parcels from 2008 to 2013. (Petition to BoR p. 3). The most recent increase, which occurred between 2011 and 2013, was roughly a 38% increase on all of their parcels. They did not offer any additional testimony regarding this chart. However, we note the Department of Revenue published a county map titled Comparative Agricultural Equalized Average Value Per Acre for 2011-2013. This map notes statewide increases from roughly 23% to roughly 63%. Dubuque County's increase was 39%. Therefore, Sweeneys' increases were in line with both the Dubuque County and the statewide increases.

Dubuque County Assessor Dave Kubik testified for the Board of Review. Kubik explained the subject properties were assessed using the productivity and net earning capacity method. Kubik relied on the corn suitability ratings (CSRs) ratings from the 1982 soil survey developed by the USDA conservation service. Kubik does not believe the soil survey productivity index (the rankings between soils) have been updated since 1982 because the soils have not changed over that time. He explained the CSRs found in the soil survey includes the soil type, the soil grading (slope), and the erosion factor. The CSRs are ranked from 5-100, with 100 being the most productive soil type.

Kubik explained the method used to value the Sweeney properties. He noted a computerized software model, with both crop and non-crop layers, and the County's Geographic Information System (GIS) assists in the process. The program measures the amount of each type of soil on the parcels and identifies the CSR rating for each soil type. Further, any soil in a non-crop area within the parcel is measured and the values attributed to that portion of the parcel are reduced by 49% of the crop value. Ultimately, all of the soil types, CSRs, and values associated with each CSR are totaled to reach the value of the parcel. The Sweeneys are critical of the use of a 30-year old soil survey. However, as Kubik explained it has not been updated. Further, we note the 2008 IOWA REAL PROPERTY APPRAISAL MANUAL, explains that Iowa law provides that in counties where a modern soil survey (1949 or later) has been completed, the results of such a survey must be considered in determining the productive and

net earning capacity of agricultural property. (Page 2-24). Kubik also testified that he believed if the Sweeneys, or any property owner, disagree with the information provided in the soil surveys, they may approach the Farm Service Agency (FSA) to request a soil scientist re-inspect the parcel to determine if the soil composition is different from that which existed when the last survey was completed, any change would then change the CSR rating on the parcel.

The Iowa Department of Revenue provides a productivity report every odd number year. For the 2013 assessment, the productivity report was based on the crop years 2007-2011. The Department determines a dollar-per-acre value for all properties in the County. The 2013 assessment uses this dollar-per-acre times the number of assessed acres to arrive at a total value for the county. This sum is used to generate the dollar-per-CSR.

To provide further explanation of the assessment process for the subject parcels, Kubik also explained the Board of Review's Exhibit D. Exhibit D outlines the assessment process of both crop and non-crop land on one of the subject parcels. Kubik pointed out there are five different soil codes on that particular parcel; the Exhibit also shows the amount of each type of soil. Each soil code also has an adjusted CSR tied to it. The CSR for the soil type is then multiplied by the acreage of that soil on the parcel; then it is again multiplied by \$40 per CSR to arrive at a value for that particular portion of the parcel. This mathematical process is completed for all the soil types in the crop area of that parcel. Once complete, all the values are added together. Following the same process, the non-crop area of the parcel is valued but this value is then reduced by 49% to reflect that it is non-crop area. Totaling all the crop and non-crop acres of the site, the assessed value for the Exhibit D parcel (Docket 0295) is \$40,172 (rounded). The same methodology was used on all of the subject parcels and all agriculturally classified parcels in Dubuque County.

Providing another example of an adjustment that may occur, Kubik referenced Exhibit B. On the crop portion of this site, one soil code noted as 162D Downs Silt, has a spot adjustment applied.

The number 26 is identified after the soil type. Kubik explained this spot adjustment reflects that this portion of the soil is identified as a small rocky area that will not produce anything. In those instances, the program used in the valuation process assigns no value to this portion, which in this instance is 0.34 acres.

Conclusions of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 257 Iowa 575, 133 N.W.2d 709 (Iowa 1965). The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred percent of market value. § 441.21(1). Nevertheless, in some rare instances, the test may be satisfied.

The Sweeneys assert their properties are not equitably assessed compared to nearby sites, which have a lower average assessment per acre. For agricultural properties, an inequity claim cannot be made using the *Maxwell* factors because agricultural properties are valued using productivity and net earning capacity not market value. However, in some instances, a taxpayer may be able to prove an assessor has used different methods to assess similar properties. In Sweeneys case, there is no evidence to suggest any of the agricultural properties have been valued using different formulas. Kubik's testimony was that all agricultural properties in the County are valued using the same method. Moreover, the difference in assessed values per acre is attributable to the specific soil types and their corresponding CSRs found on the individual parcels.

In an appeal alleging the property is assessed for more than the value authorized by law under section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Iowa Code section 441.21(1)(e) provides that agricultural real estate be assessed at its actual value by giving exclusive consideration to its productivity and net earning capacity. In determining the productivity and net earning capacity of agricultural real estate, the assessor is required to use available data from Iowa State University, the Iowa crop and livestock reporting service, the Department of Revenue, the *Iowa Real Property Appraisal Manual*, and to consider the results of a modern soil survey, if completed. Iowa Code § 441.21(1)(f); Iowa Administrative Code r. 701-71.3. The parcels at issue all carry an agricultural classification, which requires that they are valued using the set formula. *See* Iowa Admin. Code r. 701-71.3, 701-71.12. The Sweeneys did not provide sufficient evidence to support their assertion the method for valuing their parcels was incorrect or resulted in an over-assessment.

Finally, we note a recent amendment to Iowa Administrative Code Rule 701-71.3(1), which became effective in July 2013, requires that by 2017 the Assessor's Office determine which portion of

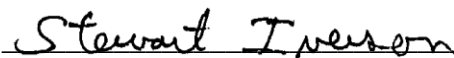
the property qualifies as non-cropland and make adjustments to non-cropland in future years. R. 701-71.3(1)(b), (c). It appears the Dubuque County Assessor's Office was already providing a reduction for non-cropland. The formula the Assessor's Office previously applied may not result in the same valuation as under the new formula set forth in the amended Rule.

THE APPEAL BOARD ORDERS the January 1, 2013, assessments of the Sweeney's agriculturally classified parcels located in the Prairie Creek Township, Dubuque County, Iowa, are affirmed.

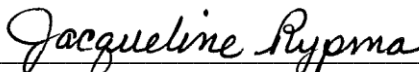
Dated this 26th day of June 2014.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

Cc:

Arthur F. Gilloon
Gilloon, Wright & Hamel, PC
770 Main Street
Dubuque, Iowa 52001
ATTORNEY FOR APPELLANT

Lyle R. Gallart
Assistant Dubuque County Attorney
720 Central Avenue
Dubuque, Iowa 52001
ATTORNEY FOR APPELLEE